

**THE INDIANA CIVIL RIGHTS COMMISSION  
311 West Washington Street  
Indianapolis, Indiana 46204**

**STATE OF INDIANA    )  
                                  )  
COUNTY OF MARION )**

**DEBORAH A. FAUCETT,  
Complainant,**

**DOCKET NO. EMse80020177  
EEOC NO. 053790350**

**vs.**

**INTERNATIONAL HARVESTER,  
Respondent.**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

Comes now Robert D. Lange, Hearing Officer for the Indiana Civil Rights Commission ("ICRC") and enters his Recommended Findings of Fact, Conclusions of Law, and Order (hereinafter "the recommended decision"), which recommended decision is in words and figures as follows:

**(H.I.)**

And comes not any party filing objections to said recommended decision within the ten (10) day period prescribed by IC 4-22-1-12 and 910 IAC 1-12-1(B).

And comes now ICRC, having considered the above and being duly advised in the premises and adopts as its final Findings of Fact, Conclusions of Law, and Order recommended by the Hearing Officer in the recommended decision, a copy of which is attached hereto and incorporated by reference herein.

**Dated: December 17, 1981**

**THE INDIANA CIVIL RIGHTS COMMISSION  
311 West Washington Street  
Indianapolis, Indiana 46204**

**STATE OF INDIANA    )  
                                  )  
COUNTY OF MARION )**

**DEBORAH A. FAUCETT,  
Complainant,**

**DOCKET NO. EMse80020177  
EEOC NO. 053790350**

**vs.**

**INTERNATIONAL HARVESTER,  
Respondent.**

**RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

Comes now Respondent, International Harvester ("Harvester"), by counsel, and filed its Motion To Dismiss, which Motion is in words and figures as follows:

**(H.I.)**

And comes now Complainant, Deborah A. Faucett ("Faucett"), by counsel, and files her Motion in Opposition to the Motion to Dismiss, which Motion in Opposition is in words and figures as follows:

**(H.I.)**

And comes now Harvester, by counsel, and files Respondent's Brief in Response to Complainant's Memorandum in Support of Its (*sic*) Motion in Opposition to Respondent's Motion to Dismiss, which Brief is in words and figures as follows:

**(H.I.)**

And comes now Faucett, by counsel, and files Complainant's Response to Respondent's Brief in Response to Complainant's Memorandum in Support of its (*sic*) Motion in Opposition to Respondent's Motion to Dismiss, which response is in words and figures as follows:

**(H.I.)**

And comes now Robert D. Langer, Hearing Officer for the Indiana Civil Rights Commission ("ICRC"), having considered the above and being duly advised in the premises, and recommends that ICRC enter the following Findings of Fact, Conclusions of Law, and Order:

**FINDINGS OF FACT**

1. On December 7, 1978, Faucett filed a complaint against Harvester with the Commission On Human Rights of Indiana and Marion County ("HRC"), which contended that she was discharged by Harvester on that same day and that said discharge was an act of sexual discrimination.
2. On December 8, 1978, Faucett filed a complaint with the United State Equal Employment Opportunity Commission ("EEOC") pursuant to Title VII of the Civil Rights Act of 1964. 42 U.S.C. §2000e. Though this complaint is somewhat different in the particulars alleged, it also charged Harvester with sexual discrimination and concerns a discharge alleged to have occurred on December 7, 1978.

3. The aforementioned complaint with EEOC consists of two (2) pages. The lower left-hand corner of each page appears substantially as follows:

I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

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I declare under penalty of perjury that the foregoing is true and correct.

Date: December 8, 1978

s/Deborah A. Faucett  
Charging Party (signature)

The lower right-hand corner of each page bears an upside-down "Received" stamp of EEOC's Indianapolis District Office but its otherwise blank and appears substantially as follows:

NOTARY – (when necessary to meet State and Local requirements)

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I swear or affirm that I read the above charge and that it is true to the best of my knowledge, information and belief.

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Signature of Complainant

Subscribed and sworn to before me this date (day, month, and year)

4. EEOC deferred the complaint to ICRC on or about December 12, 1980.
5. The HRC transferred the complaint filed with it to ICRC on February 7, 1980, purportedly pursuant to IC 22-9-1-12,1(d).
6. There is no evidence that the HRC was, on December 7, 1978 when Faucett filed her complaint with the HRC, a local agency created by an ordinance authorized by IV 22-9-1-12.1(b).
7. February 7, 1980 is four-hundred twenty-seven (427) days from December 7, 1978.

8. Any Conclusion of Law which should have been deemed a Finding of Fact is hereby adopted as such.

### **CONCLUSIONS OF LAW**

1. The complaint Faucett filed with EEOC does not "...conform to the requirements of the Indiana Civil Rights Law", 910 IAC 1-2-4(B), because it is not" ...signed and verified before a notary public or other person duly authorized by law to administer oaths and take acknowledgments....". IC 22-9-1-3(o). Therefore, said complaint cannot be deemed to a complaint filed with ICRC as of the date filed with EEOC by the very terms of 910- IAC 1-2-4-(B).

2. In *City of Bloomington v. Hudgins* \_\_\_\_ Ind. App. \_\_\_\_, 383 N.E.2d 400 (1978 (on Petition for Rehearing)), the Court of Appeals held ineffective the attempt of the General Assembly in §§ 3 and 4 of Acts 1978 P.L. 123 to retroactively confer jurisdiction and power on local human rights agencies created pursuant to IC 22-9-1-12, which was held unconstitutional in *Indiana University v. Hartwell* \_\_\_\_ Ind. App. \_\_\_\_, 367 N.E.2d 1090 (1977).

3. IC 22-9-1-12.1(d) authorizes a "local agency" to transfer a complaint filed with it to ICRC and requires ICRC to treat such a complaint as if it had been filed with ICRC on the date it was filed with the local agency. The "change of venue" and "relation lack" provisions do not apply in this case, however, because at the time faucet filed her complaint with the HRC, the HRC was not an agency empowered under an ordinance enacted pursuant to the authority granted by IC 22-9-1-12.1(b).

4. The burden of proof on the issue of whether an entity is a local agency created by an ordinance enacted pursuant to IC 22-0-1-12.1(b) is on Complainant. [See *Johnson v. Community Blood Bank f Marin County, Inc. d/b/a Central Indiana Regional Blood Center* (Docket No. EMra80020165 decided May 29, 1981)].

5. Faucett's complaint is not timely filed. IC 22-9-1-3(o).

6. Assuming, without deciding, that the time limitation for filing a complaint imposed by IC 22-9-1-3(o) is, as urged by Faucett, a statute of limitation subject to tolling based on equitable principles, such principles are not appropriately applied in the instant case. Tolling is appropriate where a defendant (here Respondent) has taken some step which misled a Plaintiff (or Complainant), or sat silently while under a duty to speak, causing the Plaintiff (Complainant) to fail meet the prescribed time limit Here, the people who misled Faucett, intentionally or otherwise, were the staff of the HRC and officers or members of her Union. There is n hint of any responsibility of Harvester to rely on the Statute of Limitations (if that is what it is). The unfairness of allowing a party who has contributed to belated filing to rely on such tardiness is the basis for equitable tolling.

7. Any Finding of Fact which should have been deemed a Conclusion of Law is hereby adopted as such.

### **ORDER**

1. Faucett's complaint should be, and the same hereby is, dismissed.

**Dated: November 23, 1981**